



**Montenegro**  
**COUNCIL OF THE AGENCY FOR ELECTRONIC MEDIA**  
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**RULEBOOK**  
**ON THE CONDITIONS AND PROCEDURE FOR AWARDING LICENCES FOR**  
**ON-DEMAND AUDIOVISUAL MEDIA SERVICES**

Podgorica, July 2011

Pursuant to Article 120 of the Electronic Media Law ("Official Gazette of Montenegro," No. 46/10), at the meeting held in 11 July 2011, the Council of the Agency for Electronic Media adopted the following

**Rulebook  
on the Conditions and Procedure for Awarding Licences for  
On-demand Audiovisual Media Services**

**Basic Provisions**

**Article 1**

- (1) This rulebook regulates the procedure and terms and conditions for awarding the licences for provision of on-demand audiovisual services.
- (2) The licences for provision of on-demand audiovisual services are awarded by the Agency for Electronic Media (hereinafter referred to as: Agency).

**Article 2**

The purpose of this rulebook is to contribute to the protection of media pluralism, public interest and free and equal access to all audiovisual media services (hereinafter referred to as: AVM services), as well as fair and efficient competition in the electronic communications market, as a precondition for the provision of and/or access to AVM services.

**Article 3**

- (1) Certain terms used in this Rulebook have the following meaning:
  - a) **AVM service:** a service under editorial responsibility, the principal purpose of which is the provision of programmes aimed at informing, entertaining or educating the general public by electronic communications networks, and may take the form of electronic media (radio or television broadcast), an on-demand AVM service or audiovisual commercial communication;
  - b) **Programme:** a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by an AVM service provider and whose form and content is comparable to the form and content of television or radio broadcasting;
  - c) **editorial responsibility:** the exercise of control both over the selection of programmes and over their organisation either in a chronological schedule, in the case of television and radio broadcasts, or in a catalogue, in the case of on-demand AVM services;
  - d) **on-demand AVM service:** a service which enables the reception of radio and/or television programme based on the individual user request and the catalogue of programmes selected by the AVM service provider, available solely based on a user contract or other form of prior individual authorisation;
  - e) **on-demand AVM service provider:** a natural or a legal person registered for telecommunication activity who, in accordance with the law, was awarded a licence for distribution of television and/or radio programme or other on-demand media services;
  - f) **multiplex:** a standardised set of digital signals containing several radio and/or television broadcasts and/or other data transmitted simultaneously within one radio frequency channel;
  - g) **catalogue of programmes:** a document containing a list of radio and/or television programmes or other content offered by the on-demand AVMS provider as a single service package of programmes to subscribers by means of electronic communications networks;
  - h) **subscriber:** a person using, on the basis of a contract with AVM service provider, its services in return for payment, or subscription fee;
- (2) Other terms used in this Rulebook have the meaning as defined by Article 8 of the Electronic Media Law (hereinafter referred to as: Law).

- (3) Any term used in this Law for natural persons in masculine gender means the same term in the feminine gender.

### **Article 3**

- (1) The Agency awards licences for provision of on-demand audiovisual services (hereinafter referred to as: on-demand AVM service licences) on the basis of:
- a) a public tender, when on-demand AVMS provider intends to use terrestrial radio-frequencies for their provision;
  - b) a request for awarding on-demand AVM service licence, when AVM service provided intends to provide these services by means of electronic communication networks without terrestrial radio-frequencies.
- (2) Prior to launching a public tender referred to in paragraph 1 of this Article, the Agency is obliged to obtain the data on availability of frequencies or free capacity in a digital terrestrial broadcasting multiplex, allocated for the broadcasting of AVM services, from the regulatory authority for electronic communications.

### **Awarding of licences for provision of on-demand AVM services – public tender**

### **Article 5**

- (1) The Council of the Agency for Electronic Media (hereinafter referred to as: Council) launches a public tender for awarding the right to provision of AVM services by means of frequencies envisaged for the provision of AVM services by the Radio-Frequency Allocation Plan (hereinafter referred to as: public tender).
- (2) The public tender shall contain the following elements.
- a) subject of the public call (data on the frequency bands, radio-frequencies and channels subject to the public tender, intended for the on-demand AVM service providers (terrestrial broadcasting systems and MMDS systems);
  - b) information on the envisaged number of radio and television programmes for which the right to access digital broadcasting multiplex is granted via the public tender for access to multiplex capacities;
  - c) terms and conditions for application to tender;
  - d) selection criteria with scoring methodology;
  - e) level of fee for the processing of tender applications;
  - f) level of deposit which may not exceed one quarter of the annual fee for provision of on-demand AVM services;
  - g) licence validity period;
  - h) application submission deadline, which may not be shorter than 30 days from the announcement of public tender;
  - i) deadline for adoption of a decision, which may not be longer than 60 days from the expiry of the application submission deadline;
  - j) list of supporting documents.

### **Article 6**

- (1) The selection criteria shall be non-discriminatory, objective and measurable and shall refer to:
- a) scope and structure of applicant's programme package(s) (diversity, share of Montenegrin radio and TV programmes, etc) that the on-demand AVM service provider intends to distribute;
  - b) financial data related to capacity for profitable operation and market viability.
- (2) The public tender is published in the "Official Gazette of Montenegro", on the website of the Agency and in at least one daily print media outlet published in Montenegro.

## **Article 7**

- (1) The public tender referred to in Article 4 of this rulebook is open to all legal or natural persons that:
  - a) are registered with the competent court for pursuing the activity of telecommunications and intend to provide on-demand AVM services by means of radio-frequencies;
  - b) has met all due financial liabilities towards the Agency on any ground before applying to tender.
- (2) Application to the public tender for awarding the right to provision of on-demand AVM services (hereinafter referred to as: tender application), is submitted to the Agency using a separate form included in this rulebook (Form 1).
- (3) The tender application form includes a statement confirming that the data provided by the applicant are true and correct, as well as that:
  - a) it is not a person that is not entitled to on-demand AVM service licence as per the provisions of the Electronic Media Law and other valid legislation, and
  - b) it is not undergoing bankruptcy proceedings;
- (4) The AVM service providers that apply to a public tender for the purpose of extension of already awarded licence are obliged to submit the tender application in compliance with Articles 5 through 7 of this rulebook.
- (5) Along with the tender application, the AVM service provider referred to in paragraph 4 of this rulebook is obliged to submit the amendments to the existing documents on the basis of which the valid licence has been awarded or a certificate confirming that there are no changes compared with the existing documentation.
- (6) The tender application, with the supporting documents, must be submitted in such a form ensuring that no pages can be added or removed after its submission.
- (7) The tender application is submitted in the following manner:
  - a) three copies are submitted to the Council, one of which is the original signed by a responsible person.
  - b) in a closed package with the full name and head office of the applicant and note: "Do not open – Application to public tender for awarding rights to provision of on-demand AVM services".

## **Article 8**

- (1) Along with the tender application, the following documents are submitted:
  - a) valid evidence of registration for telecommunication activities with the competent court, or evidence that the registration has been extended;
  - b) original or a certified copy of the Articles of Incorporation and the Statute submitted to the competent authority referred to in point 1);
  - c) financial statements for the two years before the public tender was launched;
  - d) business plan for the newly established companies (five-year projection);
  - e) catalogue of channels or other programmes the on-demand AVM service licence holder intends to distribute;
- (2) certificate that there are no ongoing legal proceedings against the legal person that submits an application (certificate of the Commercial Court not older than six months);
- (3) certificate that there are no ongoing legal proceedings against the responsible person of an applicant for the abuse of authority or economic criminal offences or other crimes for the commission of which a prison sentence has been prescribed (certificate of the Basic Court not older than six months);
- (4) copy of evidence of payment of the fee for processing of tender application.

- (5) Applicants may submit other documents they believe to be of importance for a decision on awarding the rights to provision of on-demand AVM services.

#### **Article 9**

- (1) Within 10 days after the expiry of tender application deadline, the Agency Council will publish on the Agency's website a list of applicants whose applications were complete and submitted in a timely manner.
- (2) The name, head office and other data of an applicant to tender will be classified until the public opening of tender applications.
- (3) The Agency Council will adopt a conclusion dismissing any incomplete and untimely tender application.

#### **Article 10**

- (1) Within 60 days after the expiry of tender application deadline, the Agency Council will adopt a decision on awarding the rights to provision of on-demand AVM services on the basis of the selection criteria, which are a part of the public tender.
- (2) The Council will conduct a comparative analysis in case when two or more applicants meeting all criteria apply for a single frequency resource.
- (3) If an applicant is an on-demand AVM service provider applying for the extension of its on-demand AVM service licence, when adopting a decision on awarding the right to provision of on-demand AVM services, the Council will take into consideration the activities of the licence holder during the validity of its licence.
- (4) In the case referred to in paragraph 3 of this Article, the Council will give preference to the existing on-demand AVM service provider if it meets all criteria defined by the tender.

#### **Article 11**

- (1) In the procedure of awarding the rights to provision of on-demand AVM services, the Council adopts a decision, which is final.
- (2) An administrative dispute may be instigated against the decision referred to in paragraph 1 of this Article.
- (3) The Council publishes a document on awarding the right to provision of on-demand AVM services in the "Official Gazette of Montenegro," on the Agency's website in at least one print media outlet published in Montenegro.

#### **Article 12**

- (1) A deposit paid by a person who has not acquired the right to provide on-demand AVM services as per the public tender will be returned within seven days from the adoption of the final decision as per the tender.
- (2) For the person who has acquired the right to provide on-demand AVM services as per the public tender, the deposit amount will be factored into the fee for provision of on-demand AVM services.
- (3) The deposit is not refundable to the on-demand AVM service licence holder who:
  - a) in writing, before the deadline set for commencing on-demand AVM service, notifies the AEM that it would not distribute programme or use the radio frequency awarded;
  - b) fails to commence distributing an on-demand AVM service within the time stipulated.

#### **Article 13**

- (1) Within 15 days after adoption of a decision as per the public tender, the Agency Director will award on-demand AVM service licences to the applicants to tender who acquired the right to provide on-demand AVM services.

- (2) Following the public tender procedure for awarding the rights to provision of on-demand AVM services, the Agency Director is obliged to:
  - a) make publically available, in the same manner as the public tender, a list of persons the on-demand AVM service licence has been awarded to;
  - b) submit a copy of the awarded on-demand AVM service licence to the regulatory authority in charge of electronic communications.

#### **Awarding of licences for provision of on-demand AVM services – individual request**

##### **Article 14**

The Agency Director awards the on-demand AVM service licence on the basis of a request submitted by a legal or natural person registered for telecommunications activities with the competent court, intending to use electronic communications networks without terrestrial radio-frequencies (cable systems, public fixed or mobile electronic communications networks, satellite distribution systems or other electronic communications networks) to provide on-demand AVM services;

##### **Article 15**

- (1) When a broadcaster intends to use electronic communications networks without terrestrial radio-frequencies to provide on-demand AVM services, it submits a request for the licence for provision of on-demand AVM services (hereinafter referred to as: request for licence) to the Agency on a separate form included herein (Form 2).
- (2) Along with the request referred to in paragraph 1 of this Article, the documents referred to in Article 8 of this rulebook are submitted.
- (3) The application referred to in paragraph 1 of this Article includes a statement confirming that the data provided by the applicant are true and correct, as well as that:
  - a) it is not a person not entitled to licence for provision of on-demand AVM services as per the provisions of the Electronic Media Law and other valid legislation;
  - b) it is not undergoing bankruptcy proceedings.
- (4) Along with the request referred to in paragraph 1 of this Article, the applicants may submit other documents they believe to be of importance for a decision on awarding the rights to provide on-demand AVM services.
- (5) The binding of the request for licence with the supporting documentation must be such that no pages can be either added or removed after its submission.
- (6) Two copies of the request for licence are submitted to the Agency, one of which is an original signed by the authorized person.

##### **Article 16**

- (1) Upon receipt of a request for licence for provision of on-demand AVM services, the Agency will examine the request and supporting documents in order to determine if the conditions for awarding the licence for provision of on-demand AVM services have been met.
- (2) If the data submitted with the request for licence are incomplete or inaccurate, the Agency will return such a request to the applicant, to be completed or amended within eight days.
- (3) If the applicant fails to complete the request for licence within eight days from the receipt of the Agency's notification concerning the incompleteness of the request, the Agency Director adopts a decision dismissing such a request.
- (4) An appeal against the conclusion referred to in paragraph 3 of this Article may be lodged with the Council within 15 days after the receipt of the decision.

### **Article 17**

Within 15 days after submission of the request referred to in Article 15 of this rulebook, the Agency Director awards the licence for provision of on-demand AVM services to the applicants whose request and supporting documentation were complete and in compliance with the conditions prescribed by the Law, this rulebook and other documents of the Agency.

### **Appeal against a decision on awarding on-demand AVM service licence**

#### **Article 18**

- (1) An appeal against a decision on awarding the licence for provision of on-demand AVM services, adopted by the Agency Director, may be lodged with the Council within 15 days after the receipt of the decision.
- (2) The Council adopts a decision on the appeal referred to in paragraph 1 of this Article within 15 days after the receipt of the appeal.
- (3) The decision of the Council referred to in paragraph 1 of this Article is final and an administrative dispute may be instigated against it.

### **Content of on-demand AVM service licence**

#### **Article 19**

- (1) The licence for provision of on-demand AVM services must include the following data on:
  - a) licence holder (name, head office/residence, registration number/tax number);
  - b) name of the on-demand AVM service;
  - c) type of the AVM service provider according to distribution platform (terrestrial broadcasting systems, cable and MMDS systems, public fixed or mobile electronic communications networks, satellite distribution systems or other electronic communications networks);
  - d) radio-frequencies awarded following a public tender;
  - e) service zone where the AVM service is provided;
  - f) catalogue of programmes or other content;
  - g) annual fee level and manner of payment;
  - h) licence validity period;
  - i) deadline for the beginning of distribution;
  - j) manner of notification of subscribers concerning the contents of the catalogue of programmes or other content;
  - k) other rights and obligations of a licence holder.
- (2) The licence referred to in paragraph 1 of this Article shall not be assigned, leased or transferred in any other way, either temporary or permanent, without the Council's consent.
- (3) On-demand AVM service providers are obliged to report any change of data referred to in paragraph 1 of this Article by submitting a request for amendment to licence for provision of AVM services.
- (4) The Agency retains the right to change the terms and conditions of the awarded licence in compliance with the law, for the purpose of a more efficient application of the law and its general documents.
- (5) In the case of amendment to a licence for provision of AVM services in compliance with paragraph 4 of this Article, the on-demand AVM service provider is exempt from the fee prescribed by a separate document regulating the level, manner of determination and payment of the fees for provision of audiovisual media services.

## **Rights and obligations of on-demand AVM service licence holder**

### **Article 20**

- (1) Acquiring the right to provide on-demand AVM services, a legal or natural person acquires the status of an on-demand AVM service provider, and the right to distribute radio and/or television programmes directly, using radio-frequencies and/or by means of electronic communications networks within certain service zone, or other on-demand AVM services.
- (2) On-demand AVM service providers that acquired the right to provide on-demand AVM services using radio-frequencies are obliged to obtain a decision of the regulatory authority in charge of electronic communications on the approval to use radio-frequencies.
- (3) In compliance with the valid regulations of Montenegro, an on-demand AVM service provider is obliged to obtain all other documents necessary to provide the service of distribution of radio and television programmes and other on-demand AVM services.
- (4) Within three months after being awarded the licence for provision of on-demand AVM services, an on-demand AVM service provider is obliged to set up and keep separate accounting records for the activities of provision of on-demand AVM services in compliance with the law regulating accountancy.

### **Article 21**

An on-demand AVM service provider is obliged to enable a user-friendly, direct and permanent access to the following information for its users by means of its website and "info" channel:

- a) name of the on-demand AVM service provider;
- b) address of the head office or residence, electronic mail address or web page of the on-demand AVM service provider;
- c) contact details of the body of the on-demand AVM service provider in charge of the processing of complaints;
- d) contact details of the regulatory authority in charge of the on-demand AVM service field.

### **Article 22**

- (1) An on-demand AVM service provider is obliged to notify the Agency in writing of all changes of data defined when the application to public tender or request for licence was submitted, especially of the following data:
  - a) address, telephone number, fax number and other contact details;
  - b) name, address and telephone number of the director of the company that established the on-demand AVM service provider;
  - c) changes in registration with the competent court;
  - d) number and structure of users;
  - e) updated list of programmes.
- (2) At the request of the Agency, an on-demand AVM service provider is obliged to submit, without delay, all operational reports directly related to the provision of service, within the timeframe defined by the Agency.
- (3) The Agency may define more details concerning the contents and form of the reports and documents referred to in paragraph 2 of this Article.
- (4) The Agency is obliged to observe the confidentiality and protect the reports and documents referred to in paragraph 2 of this Article if they are confidential.



### **Article 23**

- (1) Provision of on-demand AVM services threatening the constitutional order and national security shall be prohibited.
- (5) An on-demand AVM service shall not incite, enable incitement or spread hatred or discrimination on the grounds of race, ethnic background, skin colour, sex, language, religion, political or other belief, national or social background, financial standing, trade union membership, education, social status, marital or family status, age, health status, disability, genetic heritage, gender identity or sexual orientation.

### **Article 24**

At a reasoned written request of a public administration body, or state authorities, an on-demand AVM service provider is obliged to publish on its "info" channel, without remuneration, notifications and official statements in case of threat to life and public health, national security, and public peace and order.

### **Programme-related obligations**

#### **Article 25**

An on-demand AVM service provider is obliged to observe the programme-related obligations and other obligations prescribed by the Law and bylaws of the Agency.

#### **Article 26**

- (1) An on-demand AVM service provider is obliged to make available the programmes or content that could impair the physical condition, mental or moral development of minors in the way least likely for minors to watch or listen to in normal circumstances, in compliance with a separate document of the Council.
- (2) It is prohibited to show pornography in an unencrypted form.
- (3) An on-demand AVM service provider is obliged to stop, without delay, the distribution of programmes or contents violating the programme standards for on-demand AVM services, prescribed by a separate document of the Council.
- (4) A temporary or permanent interruption in distribution of programme referred to in paragraph 3 of this Article may be instructed by the Agency.
- (5) The Agency may restrict the freedom of reception and retransmission of television programmes and on-demand AVM services from other countries under the conditions and in compliance with the procedure prescribed by Articles 5 and 6 of the Law.
- (6) The Agency may also instruct other necessary measures in compliance with the Law and bylaws in order to redress or reduce the existing or future damage caused by the distribution of harmful programmes.
- (7) An on-demand AVM service provider shall not distribute the programmes of electronic media from Montenegro against which the Agency has imposed the measure of suspension or revocation of broadcasting licence, published on the Agency's website.

### **Catalogue of radio and television programmes**

#### **Article 27**

- (1) An on-demand AVM service provider is obliged to distribute radio and/or television programmes concurrently, wholly and without any changes, in compliance with the awarded licence.
- (2) An on-demand AVM service provider is obliged to broadcast the name, symbol or short identification sign of the electronic media outlet it has concluded distribution contract with.
- (3) An on-demand AVM service provider is obliged to:
  - a) adhere to the list of radio or television programmes included in the catalogue,
  - b) notify the Agency, beforehand, in writing, of any change in the catalogue of radio or television programmes, and any change in the number and structure of programme packages;

- c) distribute programmes in compliance with programme standards for on-demand AVM services regulated by a separate document of the Council.

### **Subscription contract**

#### **Article 28**

- (1) An on-demand AVM service provider is obliged to conclude a subscription contract with the end user governing the terms and conditions of provision of the service of radio and television programme distribution and other on-demand AVM services.
- (2) The contract referred to in paragraph 1 of this Article contains in particular the stipulations on:
  - a) level and manner of payment of the access fee;
  - b) level and manner of payment of the monthly fee;
  - c) catalogue of programmes included in the distribution service;
  - d) terms and procedure for lodging a complaint against the operation of an on-demand AVM service provider.
- (3) An on-demand AVM service provider is obliged to notify the subscribers of the upcoming change in prices and conditions of distribution of radio and television programmes at least 30 calendar days in advance.

#### **Article 29**

- (1) An on-demand AVM service provider is obliged to provide an "info" channel which will be used only for non-commercial communication with users.
- (2) The channel referred to in paragraph 1 of this Article may contain only the information on the operation of on-demand AVM service provider related to the distribution service, as well as the instructions and information related to the use of service.

#### **Article 30**

- (1) When an on-demand AVM service provider provides its service by means of a conditional access system, it is obliged to submit clear user instructions to the Agency.
- (2) The conditional access system referred in paragraph 1 of this Article shall be in line with the European Union regulations in terms of standard, compatibility and intellectual property.

### **Contract with the electronic communications network operators**

#### **Article 31**

- (1) An on-demand AVM service provider may distribute radio and television programmes on the territory of Montenegro only by means of a registered electronic communications network.
- (2) A licence for on-demand AVM service provision does not give any right to the licence holder to distribute radio and television programmes using reception systems with shared antenna device which constitute a cable and antenna structure installed as a standard amenity of residential units and which are used for reception of programmes distributed by means of terrestrial transmitters, as well as other electronic networks which do not make part of registered electronic communications networks, unless an approval of the regulatory authority for electronic communications has been acquired for such a distribution.
- (3) If an on-demand AVM service provider has a licence for provision of on-demand AVM service by means of a digital terrestrial broadcasting system, it is obliged to distribute the programmes of the broadcasters that obtained the right to access a digital terrestrial multiplex, in compliance with the law.
- (4) Should an on-demand AVM service provider provide the service of distribution of radio and television programmes which constitute the prevailing mode of reception in a certain service zone, the Agency

may obligate that on-demand AVM service provider to transmit specific programmes or content, at the request of broadcasters.

### **Article 32**

- (1) An on-demand AVM service provider who has been awarded licence for provision of on-demand AVM services using an electronic communications network is obliged, not later than within 90 days from the licence issuance date, to submit the following documents to the Agency:
  - a) a contract concluded with the operator of at least one such network;
  - b) evidence of entry into the Register of Operators kept by the regulatory body for electronic communications.
- (2) Any contract with operators of electronic communications networks concluded after the expiry of the deadline referred to in paragraph 1 of this Article is submitted to the Agency not later than 15 days after entering into such contracts.

### **Ban to deny connection**

#### **Article 33**

- (1) An on-demand AVM service provider shall not:
  - a) deny connection to an interested user should there be technical capacities in place, unless the user has outstanding contractual obligations towards the on-demand AVM service provider;
  - b) condition subscriber's access to catalogue of programmes by renouncing the right to use the same or other services offered by another on-demand AVM service provider;
  - c) condition subscriber's access to catalogue of programmes with direct purchase of its reception equipment when the same or similar equipment may be purchased domestically.
- (2) An on-demand AVM service provider is not responsible for the quality of service provided in case that the user has not acquired the receiver equipment from the on-demand AVM service provider.

### **Copyrights and related rights**

#### **Article 34**

- (1) Before including any one radio or television programme into the catalogue and beginning of its distribution, an on-demand AVM service provider is obliged to obtain a contract or prior written approval of the rights holder which will be submitted to the Agency, for the sake of record-keeping.
- (2) The Agency will keep the documents referred to in paragraph 1 of this Article confidential.

#### **Article 35**

- (1) An on-demand AVM service provider may distribute encrypted or unencrypted satellite programme only if it has concluded a distribution agreement with the rights holder of such programmes allowing decryption for the purpose of further public retransmission.
- (2) An on-demand AVM service provider shall not be deemed to have acquired the right to distribute programme by procuring a decryption card intended for individual subscriber use.

### **Public broadcasters' programmes**

#### **Article 36**

- (1) An on-demand AVM service provider is obliged to distribute, free of charge, the programmes of:
  - a) national public broadcasters in the whole service zone;
  - b) regional and local public broadcasters within the territory of their founding local self-government units.

- (2) An on-demand AVM service provider is obliged to list the radio and television programmes of public broadcaster referred to in paragraph 1 of this Article at the beginning of the catalogue of programmes.

#### **Obligation to exclude certain content**

##### **Article 37**

- (1) The broadcasters are obliged to notify, within a reasonable period, the on-demand AVM service providers if they do not have the right to broadcast certain programmes on certain platform.
- (2) In the case referred to in paragraph 1 of this Article, the on-demand AVM service providers shall not distribute such programmes.

##### **Article 38**

- (1) If an on-demand AVM service provider charges the electronic media from Montenegro for distribution, it is obliged to publish a distribution pricelist.
- (2) Every electronic media outlet is entitled to equal treatment in terms of distribution, depending on the commercial interests and technical capacities of the on-demand AVM service provider.
- (3) An on-demand AVM service provider is obliged to offer at least 10 % of its capacities for distribution of the electronic media from Montenegro.

#### **Beginning of programme distribution**

##### **Article 39**

- (1) A broadcaster being granted the licence for provision of on-demand AVM services for the first time is obliged to start distribution on all radio frequencies allocated within the time stipulated in the licence, and not later than 120 days from the licence issuance date.
- (2) An on-demand AVM service provider that extends its service zone following a public tender is obliged to start distributing programme on the allocated frequencies within the time stipulated in the licence, and not later than 60 days from the licence issuance date.
- (3) In case of failure to comply with the deadlines referred to in paragraphs 1 and 2 of this Article, the Agency Director shall revoke the licence for provision of on-demand AVM services.

##### **Article 40**

- (1) An on-demand AVM service provider that has been awarded licence to use an electronic communication network without radio frequencies is obliged to conclude and submit to the Agency a contract with the operator of at least one such network not later than within 30 days from the licence issuance date.
- (2) An on-demand AVM service provider is obliged to submit to the Agency any contract with operators of electronic communications networks concluded after the expiry of the deadline referred to in paragraph 1 of this Article not later than 15 days after concluding such contract.

#### **Licence validity period**

##### **Article 41**

- (1) The licence for provision of on-demand AVM services is awarded for a period of 15 years.
- (2) In case of transferring the licence for provision of on-demand AVM services, the amended licence is awarded for the period not longer than the expiry of the licence validity.
- (3) In case of awarding the licence for provision of on-demand AVM services at the request of a national or regional network, the licence is awarded for the period not longer than the expiry of validity of the licence awarded to the associated AVM service provider with the shortest remaining validity period.

## **Fees**

### **Article 42**

The level, manner of determination and payment of fees payable by on-demand AVM service providers in the process of awarding and use of the licence for provision of on-demand AVM services are prescribed by a separate document of the Council, regulating the level, manner of determination and payment of registration fees and fees based on the awarded licence for provision of on-demand AVM services.

### **Amendment to the licence for provision of on-demand AVM services**

#### **Article 43**

- (1) An on-demand AVM service provider is obliged to notify AEM, in writing, of any change in the catalogue of programmes.
- (2) Along with the written request for amendment to the licence, an on-demand AVM service provider referred to in paragraph 1 of this Article is obliged to submit to the Agency a contract or written consent of the programme rights holder.
- (3) The Agency adopts a decision on the amendment to the licence for provision of on-demand AVM service within seven days after the receipt of the request.

#### **Article 44**

- (1) On-demand AVM service providers are obliged to request a consent of the Council in writing if they intend to assign, lease or transfer in any other way, either temporary or permanently, their licences for provision of on-demand AVM services.
- (2) Along with the request referred to in paragraph 1 of this Article, the on-demand AVM service providers are obliged to submit a copy of evidence of payment of the fee for processing of request for amendment to the licence for provision of on-demand AVM services.
- (3) The Council will give consent for a transfer of licence for provision of on-demand AVM service to an on-demand AVM services provider if the purpose of such a transfer is a takeover of the activity, including the takeover of equipment and the existing subscribers to the service.
- (4) The Agency Council will adopt the decision on the request referred to paragraph 1 of this Article within 15 days from the day of its receipt.
- (5) The Agency Director adopts a decision on amendment to the licence for provision of on-demand AVM service on the basis of the decision referred to in paragraph 4 of this Article.

### **Procedure of extension of the licence for provision of on-demand AVM services**

#### **Article 45**

- (1) The licence for provision of on-demand AVM services awarded on the basis of a public tender may be extended following a new public tender for the frequency resources including the ones the valid licence refers to.
- (2) The licence holder referred to in paragraph 1 of this Article is obliged to submit to the Agency a request for extension of licence no later than six months before the expiry of the licence validity period.
- (3) After adoption of a decision on the public tender referred to in paragraph 1 of this Article by the Council, the Agency Director will adopt the following:
  - a) a decision on the extension of licence, if the Council decided to award the right to provide on-demand AVM services to an on-demand AVM service provider for the purpose of licence extension;
  - b) a decision on revocation of licence, if the Council decided not to award the right to provide on-demand AVM services to an on-demand AVM service provider for the purpose of licence extension.

#### **Article 46**

- (1) The licence for on-demand AVM service awarded on the basis of a request may be extended if the licence holder submits a request for licence extension to the Agency not later than six months before the expiry of the licence validity period.
- (2) Along with the request referred to in paragraph 1 of this Article, an on-demand AVM service provider is obliged to submit the following documents:
  - a) certificate confirming that all data from the originally submitted request remain the same, or
  - b) new completed request for the licence for provision of on-demand AVM service, updated and with supporting documentation.
- (3) The Agency Director will adopt a decision on the extension of the licence for provision of on-demand AVM service within 15 days after the submission of a request for its extension.

#### **Termination of licence**

#### **Article 47**

- (1) The licence for provision of on-demand AVM service will cease to be valid:
  - a) with revocation of the licence;
  - b) with expiry of licence validity period;
  - c) at the written request of the licence holder;
  - d) in case of liquidation of an on-demand AVM service provider as a legal entity.
- (2) The Agency Director will revoke the licence for provision of on-demand AVM service by a written decision if:
  - a) an on-demand AVM service provider fails to pay the fee in line with the licence;
  - b) due to the violation of this Law, an on-demand AVM service provider was pronounced the measure of temporary revocation of licence on two consecutive occasions;
  - c) when submitting the request for licence, an on-demand AVM service provider presented false data or failed to provide data relevant for decision-making;
  - d) an on-demand AVM service provider failed to start programme distribution within the time period cited in the licence;
  - e) within 90 days from being awarded the licence, an on-demand AVM service provider failed to make available the contract with an operator of at least one electronic communications network or evidence of entry into the Register of Operators, kept by the regulatory body for electronic communications;
  - f) for unjustified reasons, an on-demand AVM service provider interrupts programme distribution for more than 10 consecutive days or 15 days with interruptions within one calendar year;
  - g) the regulatory body for electronic communications revoked the licence for the use of radio-frequencies from the broadcaster if terrestrial broadcasting systems were the only electronic communications network for radio or television broadcasting;
  - h) in other cases envisaged by the Law.
- (3) In the cases referred to in paragraph 1, points b), c) and d) of this Article, the Agency Director will adopt a decision on termination of licence.
- (4) An appeal against the decision referred to in paragraphs 2 and 3 of this Article may be submitted to the Council within 15 days after the decision has been submitted.
- (5) The Council is obliged to adopt a decision on the appeal referred to in paragraph 4 of this Article within 15 days after the receipt of the appeal.

- (6) The decision referred to in paragraph 5 of this Article is final and an administrative dispute may be instigated against it.

#### **Article 48**

- (1) In case that an on-demand AVM service provider is subject to bankruptcy proceedings, it is obliged to inform the Agency about that not later than 14 days after the adoption of a decision on initiation of the bankruptcy proceedings.
- (7) An on-demand AVM service provider is obliged to inform the bankruptcy administrator about its liabilities towards the Agency.

#### **Article 49**

If the data from the licence for provision of on-demand AVM services licence are changed, or the licence is amended, extended or transferred in compliance with this Rulebook, the Agency will amend the data in the relevant register.

#### **Article 50**

- (1) An on-demand AVM service provider is obliged to respond in writing to any submitted complaint against the content of the on-demand AVM service to the complainant not later than eight days after the receipt of the complaint.
- (2) An on-demand AVM service provider is obliged to keep the register of complaints.
- (3) An on-demand AVM service provider is obliged to instruct complainants that they may lodge an appeal against the response to a complaint against the content of the on-demand AVM service with the Agency, in compliance with the law and the secondary legislation of the Agency regulating the procedure following the complaints in case of violation of conditions defined by the licences, decisions and regulations awarded or adopted by the Agency.
- (4) The applicant referred to in Article 3 of this Article may submit any adequate evidence on the operation of an on-demand AVM service provider to the Agency, which does not deny the right of the Agency to gather evidence and use all adequate means within its jurisdiction.

### **Transitional and final provisions**

#### **Article 51**

The holders of the licences for development and use of cable and wireless systems for distribution of radio and television programmes to end users, the licences for distribution and radio and television programmes by means of a public fixed telecommunications network, and the licences for distribution and radio and television programmes by means of a satellite distribution system, awarded in compliance with the Broadcasting Law, are obliged to harmonize their operation with the provisions of this Rulebook not later than 30 days after its entry into force.

#### **Article 52**

With this Rulebook entering into force, the Rulebook on Cable and Wireless Systems for Distribution of Radio and Television Programmes to End Users ("Official Gazette of the Republic of Montenegro," No. 67/06 and "Official Gazette of Montenegro," No. 28/08) and the Rulebook on the Procedure of Awarding and Terms and Conditions of the Licences for Distribution and Radio and Television Programmes by Means of Public Fixed Telecommunications Networks and Satellite Distribution Systems ("Official Gazette of the Republic of Montenegro," No. 57/07 and "Official Gazette of Montenegro," No. 05/07) shall be repealed.

#### **Article 53**

- (1) The Agency Director will award the licences for provision of on-demand AVM services to the holders of the licences for development and use of cable and wireless systems for distribution of radio and television programmes to end users, the licences for distribution and radio and television programmes by means of a public fixed telecommunications network, and the licences for distribution and radio and

television programmes by means of a satellite distribution system, awarded in compliance with the Broadcasting Law, not later than 29 July 2011.

- (2) The licences for provision of on-demand AVM services referred to in paragraph 1 of this Article will be awarded with the validity period defined by the licences awarded in compliance with the Broadcasting Law.

**Entry into force**

**Article 54**

This Rulebook enters into force on the eighth day upon its publication in the "Official Gazette of Montenegro".

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Podgorica, 11 July 2011

**Chairman  
of the Council of the Agency for Electronic Media**

**Ranko Vujovic**